IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMARY SUIT NO.1203 OF 2003

Anshul Agencies Plaintiff

versus

Som Distilleries & Breweries Defendant

R.Fernandes for plaintiff.

None for defendant.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 20th July 2005

PC :

1. Heard Mr.Fernandes appearing for plaintiff. Mr.Fernandes tenders affidavit proving service of the writ of summons. It is taken on record and marked "X" for identification. He points out to me that Mr.S.R.More, Advocate filed appearance for the defendant but the office has placed it under objections. No intimation has been given of filing of such Vakalatnama by the advocate for defendant to Mr.Fernandes nor is he otherwise intimated about appearance by the defendant. The affidavit proving service clearly states that the packet containing writ of summons has been duly

served by the Sheriff of Mumbai and he has received back the acknowledgements duly signed by the defendants. The service is effected at the defendants' registered office as well as corporate office. The original documents are also tendered. Same are taken on record and marked "X-1".

2. Mr.Fernandes points out that there is no defence to the claim in the suit which is arising out of a written contract which is evidenced by purchase orders, delivery challans and invoices under which goods were sold, supplied and delivered to the defendant. In fact, when the suit notice was addressed claiming payment, a reply was sent on 3rd January 2003 by the defendant through their advocate. The defendant disputed the correctness of two invoices and stated that the goods covered thereunder were of substandard or of inferior quality and ought to be lifted and apart from that the defendants are ready and willing to pay a sum of Rs.3,28,094/-. In response to this letter plaintiff's advocate pointed out that the admitted amount atleast be remitted and thereafter appropriate adjustments would be made if the defendants satisfy the plaintiff that the goods were of inferior

quality. That the goods were of inferior quality is nothing but an excuse for not making payment. It is pointed out that the goods were received at site and the bills/invoices are of the year 2002 but the complaint about their quality was made belatedly after three years. Be that as it may, Mr.Fernandes points out that after the summary suit was filed neither has any appearance been entered nor any defence is otherwise raised to the suit. Despite entering appearance through an advocate, the defendant has not taken steps to intimate the plaintiff about the same.

3. In the light of the aforesaid, the plaintiffs are entitled to a judgement in their favour. The claim is maintainable under Order XXXVII of the CPC.. In the light of the fact that there is an admission of the liability and the suit is filed on 7th February 2003, the claim is within limitation.

4. Accordingly there will be a decree as prayed. Refund of court fees and computation of advocates costs as per rules. Certified copy of decree is expedited.

(S.C.DHARMADHIKARI, J.)